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BEFORE THE

Federal Communications Commission

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

WASHINGTON, D. C. 20554

In re Applications of

DAVID A. RINGER

ASF BROADCASTING CORPORATION

WILBURN INDUSTRIES, INC.

) MM DOCKET NO. 93-107

) File No. BPH-91123OMA

) File No. BPH-91123OMB

) File No. BPH-91123OMC

applicant to indicate, with respect to each integrated principal, "whether a qualitative credit will be claimed for minority status, past local residence, female status, broadcast experience or civic activity.

Of course, Ringer fails to note what the application itself states. In Section IV-B of the June 1989 version of FCC Form 301, the version used by WBC, applicants are called upon to indicate whether they will claim qualitative credit for: (a) minority status, (b) past local residence, (c) female status, (d) broadcast experience, and (e) daytime preference. Section IV-B of the form makes no mention of civic activity. See Attachment A hereto.¹

Beyond question, an applicant should be able to rely upon the directions appearing in the application form itself. In the June 1989 version of FCC Form 301, the Commission listed on page 7 numerous qualitative attributes that were to be identified in the applicant's integration statement. Absent from that list was civic activity.

An applicant should not be barred from claiming civic activity credit where the Commission itself failed to list, in Section IV-B, civic activity as one of the qualitative attributes to be identified in the pre-designation integration statement. While the Commission may hold an applicant to an exacting standard, it cannot do so unless the Commission itself sets forth that standard with exactitude. See, e.g., Salzer v. FCC, 778 F.2d 869, 871-72 (D.C. Cir. 1985); Radio Athens, Inc. v. FCC, 401 F.2d 398, 404 (D.C. Cir. 1968). Here, in Section IV-B of the June 1989 version of FCC Form 301, the Commission failed to state that civic activity credit must be claimed in the applicant's integration statement. Under the circumstances, it simply

¹ Subsequently, Section IV-B of FCC Form 301 was revised to include civic activities. That revision, however, did not appear until August 1992, eight months after the above-captioned Westerville applications were filed. See Attachment B hereto.

would be unfair to strike WBC's claim of qualitative enhancement credit for the civic activities of Mr. Edwards.

Contrary to Ringer's claim, neither he nor any other applicant has been materially prejudiced. An applicant could satisfy the letter of the instructions to the June 1989 version of FCC Form 301 stating, without any further elaboration, that civic activity enhancement will be claimed. The presence or absence of such a bare-bone statement would not materially aid in the analysis of the various applicants' comparative ranking.²

In her unauthorized comments in support of Ringer's motion to strike, Shellee Davis cites Gary Sellers, 7 FCC Rcd 2472 (ALJ Fryziak 1992).³ There, Judge Fryziak, in rejecting the civic activity enhancement credit claimed by applicant Sellers, did not make reference to the fact the form itself (as opposed to the instructions) does not list civic activity as one of the enhancement claims that must be specified in an exhibit to the application. Furthermore, because applicant Sellers did not file exceptions, Judge Fryziak's ruling with respect to this matter has not been reviewed by either the Review Board or the full Commission. See Gary Sellers, 7 FCC Rcd 4281 (Rev. Bd. 1992).

² Significantly, the Commission requires an applicant using the August 1992 version of FCC Form 301 not only to state whether it will claim a civic activity preference but to specify (a) the activities, (b) whether they were in the community of license or service area, and (c) the dates of the integrated principal's participation. See Attachment B hereto.

³ The citation in Davis' Comments, 6 FCC Rcd 2472, is in error.

WHEREFORE, In light of all circumstances present, Ringer's motion to strike
a portion of WBC's integration and diversification statement should be DENIED.

WESTERVILLE BROADCASTING COMPANY
LIMITED PARTNERSHIP

By 

Attachment A

**Section IV-B of FCC Form 301
(June 1989 Version)**

Section IV-A - PROGRAM SERVICE STATEMENT

Attach as an Exhibit, a brief description, in narrative form, of the planned programming service relating to the issues of public concern facing the proposed service area.

Exhibit No.
3

Section IV-B - INTEGRATION STATEMENT

Attach as an Exhibit the information required in 1. and 2. below.

Exhibit No.
4

1. List each principal of the applicant who, in the event of a grant of the application on a cooperative basis, proposes to participate in the management of the proposed facility and

Attachment B

**Section IV-B of FCC Form 301
(August 1992 Version)**

Section IV-A - PROGRAM SERVICE STATEMENT

Attach as an Exhibit, a brief description, in narrative form, of the planned programming service relating to the issues of public concern facing the proposed service area.

Exhibit No.

Section IV-B - INTEGRATION STATEMENT

Attach as an Exhibit the information required in 1. and 2. below.

Exhibit No.

1. List each principal of the applicant who, in the event of a grant of the application on a comparative basis, proposes to participate in the management of the proposed facility and, with respect to each such principal, state whether he or she will work full-time (minimum 40 hours per week) or part-time (minimum 20 hours per week) and briefly describe the proposed position and duties.
2. State with respect to each principal identified in response to Item 1. above, whether the applicant will claim qualitative credit for any of the following enhancement factors:
 - (a) Minority Status
 - (b) Past Local Residence
If Yes, specify whether in the community of license or service area and the corresponding dates.
 - (c) Female Status
 - (d) Broadcast Experience
If Yes, list each employer and position and corresponding dates.
 - (e) Daytime Preference
 - (f) Civic activities
If Yes, describe the activities, specify whether in the community of license or service area, and state the corresponding dates.

CERTIFICATE OF SERVICE

I, Pamela R. McKethan, hereby certify that on this 19th day of May, 1993, copies of the foregoing **OPPOSITION TO MOTION TO STRIKE** were hand delivered or mailed, first class, postage prepaid, to the following:

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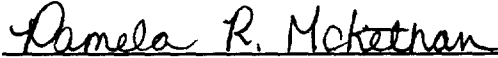
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